

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

H&H EGG RANCH, INC,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 86-170

ORDER GRANTING
JUDGMENT TO
RESPONDENT

THIS MATTER arose on appellant's appeal, filed September 22, 1986, from respondents Order No. DE 86-C234, issued September 10, 1986. The parties have stipulated to the facts and agreed to have the Board decide the case on the written record.

1 I. FACTS

2 The Stipulation of Facts was received by the Board on January 13,
3 1987. The following was agreed:

4 1. H&H Egg Ranch, Inc., hereinafter referred to as H&H,
5 is a locally owned chicken and egg production ranch located south of
6 Grandview, Washington.

7 2. In September of 1986, H&H began construction of a
8 poultry waste storage lagoon on its property.

9 3. Prior to beginning construction of the lagoon, H&H
10 failed to submit to the Department of Ecology and receive Department
11 approval of, plans and specifications for, and the proposed method of
12 future operation and maintenance of, the poultry manure lagoon.

13 4. On September 10, 1986, the Department of Ecology
14 issued a cease and desist Order No. DE 86-C234. The Order is attached
15 as Exhibit 1.

16 5. On September 22, 1986, H&H timely filed an appeal to
17 the above-entitled board of Order No. DE 86-C234.

18 II. RECORD

19 In addition to the above recited uncontested facts, the following
20 were considered by the Board in deciding this matter.

21 1. Order No. DE 86-C234, issued September 10, 1986.

22 2. Notice of Appeal, received September 22, 1986.

23 3. Appellant's Brief, dated November 21, 1986.

24 4. Respondent's Brief, dated February 19, 1987.

25 5. Response Brief of Appellant, dated March 5, 1987.

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(2)

1 III. DECISION

2 The dispute in this case centers on one issue: Whether the
3 poultry manure lagoon in question is a "sewage disposal system" within
4 the coverage of RCW 90.48.110. If it is, then that statutory
5 provision requires plans for its construction, operation and
6 maintenance to be submitted to and approved by the Department of
7 Ecology "before construction thereof may begin."

8 What may constitute a "sewage disposal system" is not defined in
9 Chapter 90.48 RCW, the state water pollution control law. The task of
10 definition is left to the implementing regulations. See RCW 90.48.035.

11 Chapter 173-240 WAC contains the regulations which implement RCW
12 90.48.110. That chapter extends the plan submission and approval
13 program to facilities involved in the disposal of "industrial
14 wastewater." Under WAC 173-240-020(8) this term means:

15
16 the water or liquid carried waste from industrial or
17 commercial processes, as distinct from domestic
18 wastewater. These wastes may result from any process or
19 activity of industry, manufacture, trade or business,
20 from the development of any natural resource, or from
21 animal operations such as feedlots, poultry houses or
22 dairies. The term includes contaminated stormwater and
23 also leachate from solid waste facilities. (Emphasis
24 added)

21 "Industrial wastewater facility" is defined also, as follows:
22

23 all structures, equipment, or processes required to
24 collect, carry away, treat, reclaim or dispose of
25 industrial wastewater. WAC 173-240-020(9)

1 Based on these definitions, under the agreed facts, we conclude
2 that appellant's poultry manure lagoon is subject to the requirements
3 of RCW 90.48.110.

4 We conclude, further, that when construction commenced without the
5 submission of plans, RCW 90.48.110 was violated. The cease and desist
6 order at issue, then, was clearly within the statutory authority of
7 Ecology to issue. RCW 90.48.120.

8 We do not understand appellant to argue that the regulatory
9 provisions of chapter 173-240 WAC are invalid. Were it to do so, the
10 argument would be unavailing. Regulations are designed to "fill the
11 gaps" left by the general language of statutes. Hama Hama v.
12 Shorelines Hearings Board, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).
13 Regulations will be upheld if they are "reasonably consistent with the
14 statute they purport to implement." Weyerhaeuser Co. v. Department of
15 Ecology, 86 Wn.2d 310, 314, 545 P.2d 5 (1976). We believe the
16 provisions of chapter 173-240 WAC meet this standard in implementing a
17 law designed to "prevent and control the pollution of the waters of
18 the state." RCW 90.48.010.

19 Appellant's assertions about the environmental effect of the
20 lagoon or its value in the process of soil building are irrelevant to
21 the bare legal issue of the applicability of the pre-construction plan
22 submission requirement. Indeed, it is such factual matters that the
23 agency plan review process is supposed to address.

1 Moreover, we possess on this record no facts which would support a
2 finding of selective enforcement. Even were such facts
3 uncontroverted, we would not on that basis invalidate the Order issued
4 here. The failure of enforcement authorities to pursue every offender
5 can not stop them from enforcing the law altogether. See Mercer
6 Island v. Steinmann, 9Wn.App.479, 513 P.2d 80 (1973).

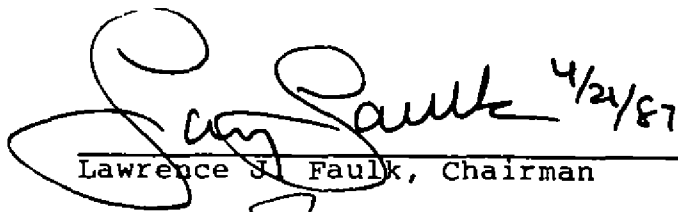
7 Therefore, in light of the foregoing we make the following


8 ORDER


9 Order No. DE 86-C234 issued to H&H Egg Ranch, Inc., on September
10 10, 1986, is affirmed.

11 DONE this 22nd day of April, 1987.

12
13 POLLUTION CONTROL HEARINGS BOARD

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15  4/24/87
16 Lawrence S. Faulk, Chairman

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19 Judith A. Bendor, Member

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21 Wick Dufford, Member
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